

**Attorney Generals of New York, California, Illinois, Maine, Massachusetts, Michigan,
Oregon, Rhode Island, Vermont, Washington**

February 15, 2017

By Facsimile, Electronic Mail and First Class Mail

Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Re: Opposition to S.168 – The “Commercial Vessel Incidental Discharge Act”

Dear Senator McConnell and Senator Schumer:

We write to express our strong opposition to S.168, the Commercial Vessel Incidental Discharge Act (“Commercial Vessel Act”). This legislation, currently under consideration in the U.S. Senate, resurrects previous attempts to dismantle federal and state water pollution control laws that protect our vital waterways from the scourge of invasive species discharged by commercial shipping vessels.

The Commercial Vessel Act would dramatically weaken defenses against aquatic invasive species discharged in the ballast water of big ships by eliminating key legal protections. In particular, this legislation seeks to preempt traditional state authority to take the actions necessary for protecting state water resources, while doing away with existing federal laws that safeguard our nation’s waters against harmful pollutant discharges from vessels. By removing legal protections against vessel-discharged invasive species, S. 168 *increases the risks of* infestations by this dangerous and costly form of biological pollution.

Vessel-discharged pollutants currently are controlled by the Clean Water Act, our nation’s comprehensive water pollution law. The Act’s purpose is “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Clean Water Act protections are critically important where the integrity of waters is threatened by biological pollutants like invasive species, which push native species to extinction and wreak havoc with commercial and recreational fisheries. The Clean Water Act requires the U.S. Environmental Protection Agency (EPA) to scientifically develop and regularly improve uniform minimum pollution treatment standards, and then incorporate them as discharge requirements in permits that are renewed every five years. The Commercial Vessel Act takes the radical step of

eliminating these vital Clean Water Act protections and relegates EPA – the federal agency with the greatest knowledge and experience in addressing water pollution – to an advisory role. The Commercial Vessel Act vests primary responsibility for controlling vessel pollution with the U.S. Coast Guard, an agency mainly focused on homeland security that has little water pollution expertise.

The Clean Water Act also invests states with the authority to continuously ensure protection of state water quality standards. Many states, through the Act's water quality certification process, have added their own protective conditions to EPA's nationwide vessel general permit, ensuring that state water quality will not be degraded by vessel pollution. For example, New York requires that Great Lakes vessels operating in New York waters employ practices to minimize the uptake and spread of invasive species infesting the Upper Great Lakes like the Eurasian ruffe, and certain pathogens that are lethal to fish. The Commercial Vessel Act vitiates the traditional role of states as partners with the federal government in protecting our waters, broadly preempting state authority to address harmful vessel pollution.

All across this country, aquatic invasive species discharged by vessels have caused and continue to present serious costly threats to the public and the environment. In Washington State, marine waters are infested with 94 aquatic invasive species which threaten a commercial shellfish industry valued at \$1.7 billion in gross state product, and invasive mussel infestation in the Columbia River drainage system could cost hundreds of millions of dollars annually in damages and mitigation. In the Great Lakes, there are now more than 180 aquatic non-native species, including the notorious zebra and quagga mussels and other invasive organisms that have radically altered the ecosystem. The introduction of most of these invaders is attributed to ballast water discharges from commercial vessels. The establishment of aquatic invasive species threatens a Great Lakes recreational fishery valued at \$7.2 billion annually, of which over \$1 billion annually occurs in New York. In addition, more than 50 aquatic invasive species in Long Island Sound threaten a commercial and recreational fishery that is estimated to contribute over \$1 billion annually to local economies. One of New York's most precious resources, the Hudson River, is now infested with more than 100 aquatic non-native species. In California, many varieties of invasive species are found throughout the state. San Francisco Bay alone hosts over 200 invasive species. Zebra and quagga mussels are established in California, and it has been estimated that it costs over \$500 million a year to manage mussels at power plants, water systems and industrial complexes, and on boats and docks in California. Because states directly bear the immense consequences of an invasive species outbreak, it is critical that their authority to regulate ballast water discharges be preserved in order to prevent such invasions of their vital waterways.

The Commercial Vessel Act adopts inadequate, decade-old invasive species standards – developed under the auspices of the International Maritime Organization – from a treaty the United States has never ratified, and then leaves them in place until 2022. The legislation provides for review of these standards every ten years by the U.S. Coast Guard, who may then choose not to revise them based on a “practicability review” that places commercial shipping interests on an equal footing with environmental protection. Further, S. 168 exempts from any pollution controls vessels operating within a broadly-defined “geographically limited area,”

rendering unprotected from vessel-discharged biological pollution some or all of the Great Lakes as well as vast stretches of U.S. coastal waters.

Besides jettisoning the Clean Water Act, the Commercial Vessel Act also seeks to do away with state authority under the Nonindigenous Aquatic Nuisance Protection and Control Act of 1990 (NANPCA) (16 U.S.C. §§ 4701-4751), as amended by the National Invasive Species Act of 1996 (NISA). NANPCA recognizes that states and the federal government must act as partners to effectively prevent the introduction and spread of aquatic invasive species. NANPCA expressly preserves states' rights "to adopt or enforce control measures for aquatic nuisance species." 16 U.S.C. § 4725. State regulations protected under this savings clause would be eliminated by S. 168, which preempts state authority to address commercial vessel pollution and expressly supersedes NANPCA.

Our states' waters are vital resources, directly linked to the health of our economies, our environment, and our public health. The Commercial Vessel Act's elimination of Clean Water Act protections, and preemption of traditional state authority for safeguarding our waters, represent a risky, and likely very costly, step backward in the effort to defend against future invasive species infestations caused by vessel discharges. This legislation fails to serve the best interests of our citizens, and the public at large, and we urge you to oppose its passage.

Thank you for your consideration of our concerns.



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